

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

MICHAEL R. CREDILLE

PETITIONER

v.

NO. 2:06CV00085 JMM/HDY

LINDA SANDERS, Warden, FCI
Forrest City, Arkansas

RESPONDENT

FINDINGS AND RECOMMENDATION

INSTRUCTIONS

The following findings and recommendation have been sent to United States District Judge James M. Moody. Any party may serve and file written objections to these findings and recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the Office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendation. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The details of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite 402
Little Rock, Arkansas 72201-3325

DISPOSITION


The records maintained by the Clerk of the Court for the United States District Court for the Eastern District of Arkansas reflect that on October 21, 2005, petitioner Michael R. Credille ("Credille") filed a petition for writ of habeas corpus pursuant to 28 U.S.C. 2241 in 2:05CV00264 HDY. In his petition, he challenged the computation of the amount of time he would be eligible to serve in a residential reentry center, or halfway house. On January 11, 2006, the undersigned dismissed Credille's petition without prejudice because he lacked standing to make his challenge. He subsequently filed a motion to alter or amend the judgment 2:05CV00264, a motion currently pending before the Court.

On March 24, 2006, Credille commenced the case at bar by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. 2241. He represented in a later submission that 2:05CV00264 and the case at bar are "identical and based on the same facts ...". See Document 6 at 1. On April 17, 2006, the undersigned directed Credille to submit either the five dollar filing fee or an application to proceed in forma pauperis. On April 28, 2006, Credille filed the pending motion to stay the directives of the April 17, 2006, order. See Document 6. He asked that the order requiring the submission of either the five dollar filing fee or an application to proceed in forma pauperis be stayed pending the resolution of his motion to alter or amend the judgment in 2:05CV00264.

The Court has given careful consideration to the motion at bar. Although 2:05CV00264 is a closed case, Credille has asked the Court to re-open the case by altering or amending the judgment. The Court has no idea at this time what disposition will be made of his motion to alter or amend the judgment, but it is a complete waste of judicial resources to permit Credille to litigate identical issues in separate, on-going cases. It is best to permit 2:05CV00264 to be completely resolved before allowing him to litigate the same issues in the case at bar. For this reason, his motion to stay the directives of the April 17, 2006, order will not be resolved. Instead, the case at bar should be dismissed.

Clearly, sua sponte dismissals are not favored. See Haley v. Dormire, 845 F.2d 1488 (8th Cir. 1988). The undersigned nevertheless recommends that the case at bar be dismissed without prejudice because it is identical to a pending case, that being, 2:05CV00264.

DATED this 5 day of May, 2006.



UNITED STATES MAGISTRATE JUDGE